IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 9 OF 2007

M.D. Enterprises ...Petitioners

versus

Kum Kum Kavita Co-op. Hsg. Soc. Ltd. and another ...

Respondents

Mr. Rajiv Narula, instructed by M/s. Jhangiani, Narula & Associates for the petitioners.

Mr. A.S. Desai for the respondents.

CORAM: **SWATANTER KUMAR, C.J.**

DATE: DECEMBER 07, 2007.

P.C.

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996, praying for appointment of an Arbitrator in terms of clause 30 (xiv) of the development agreement dated 11th September, 2000, executed between the parties. However, the objection raised on behalf of the respondent is that the petitioner has waived the right to invoke the arbitration clause inasmuch as the petitioner has already filed a suit claiming prohibitory reliefs on the grounds that the Bank Guarantee has been obtained fraudulently and thus it was liable to be encashed as far as the present respondent is concerned.

2. Further, it is stated by the learned counsel appearing for the respondent that they would not raise any objection to the amendment and/or continuation of the said suit on the ground that there is an arbitration clause between the parties and, in fact, would participate in the suit and contest the same on merits. In view of the statement made by the learned counsel for the respondent, the learned counsel appearing for the petitioners does not press this petition. The same is disposed of. The parties are at liberty to continue with the suit. The interim order shall continue to operate for a period of four weeks from today.

CHIEF JUSTICE